

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:09CV134-1-MU

JOSE LEYVA,

Petitioner,

v.

DAVID MITCHELL, admin.,

Respondent.

ORDER

THIS MATTER is before this Court upon Respondent's Motion to Dismiss.¹ It appears that Respondent may be entitled to dismissal as a matter of law.

Petitioner, you now have the opportunity to reply to the Motion to Dismiss filed by Respondent. You may not allege new facts surrounding the events in question as part of this reply. You should base your argument solely on the allegations contained in the original petition.

PETITIONER LEYVA READ THIS:

Petitioner is further hereby advised that he has thirty (30) days from the filing of this Order in which to file any documents in opposition to the Motion to Dismiss. **FAILURE TO RESPOND WITHIN THIS TIME PERIOD MAY SUBJECT THIS ACTION TO DISMISSAL.**

¹ The Court is aware that Respondent has also filed a Motion for Summary Judgment. Petitioner, at this time, need only respond to Respondent's argument in the Motion to Dismiss that Petitioner's federal habeas petition is untimely. If the Motion to Dismiss is denied, this Court will give Petitioner additional time to respond to the Motion for Summary Judgment.

THEREFORE, IT IS HEREBY ORDERED that Petitioner has thirty (30) days from the filing of this Order in which to provide his own documents, affidavits, or declarations countering the evidence offered by Respondent in its Motion to Dismiss.

Signed: April 27, 2009

A handwritten signature in black ink, appearing to read "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

